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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re:	: Chapter 11
	: Case Nos. 00 B 41065 (SMB)
RANDALL'S ISLAND FAMILY GOLF	: through 00 B 41196 (SMB)
CENTERS, INC., <u>et al.</u> ,	:
	: (Jointly Administered)
Debtors.	:
	:
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OBJECTION OF DEBTORS AND DEBTORS-IN-
POSSESSION TO MOTION OF ALL IN FUN ENTERPRISES,
INC. FOR AN ORDER REDUCING AND/OR LIMITING
GBGC FAMILY GOLF CENTER'S TIME TO ASSUME OR
REJECT NONRESIDENTIAL REAL PROPERTY LEASE

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

GBGC Family Golf Centers, Inc. ("GBGC") and the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for their objection (the "Objection") to the Motion (the "Motion") of All In Fun Enterprises, Inc. ("AIF") requesting an order limiting the Debtors' time to assume or reject a nonresidential real property lease, respectfully state as follows:

Introduction

1. By its Motion, AIF is seeking an order compelling GBGC to assume or reject the lease between AIF and Golden Bear Golf Centers, Inc. (the “Lease”). The sole reason provided by AIF for needing such relief is that a competing facility is expected to open nearby and that AIF must have certainty in order to compete with that new facility. In light of the extreme prejudice to the Debtors and their estates that would result from being required to prematurely assume or reject the Lease, AIF’s supposed need for certainty is not compelling. The decision to assume or reject a lease must not be rushed and consideration of this issue now -- in the most active stages of these chapter 11 cases and before the Debtors’ businesses have yet become stabilized -- would be unduly burdensome to the Debtors and their estates and could ultimately result in the loss of a valuable asset or a huge and unnecessary administrative expense.

Background

2. On or about January 31, 1997, AIF and Golden Bear Golf Centers, Inc. (the predecessor-in-interest to GBGC) entered into the Lease for a golf facility located at 39500 Five Mile Road, Plymouth, Michigan. The Lease terminates on January 31, 2017.
3. On July 27, 2000, this Court entered an order extending the Debtors’ time to assume or reject its nonresidential real property leases until October 9, 2000.
4. On or about September 15, 2000, AIF filed its Motion seeking to compel GBGC to assume or reject the Lease.
5. On September 22, 2000, the Debtors filed their Motion seeking to extend the time to assume or reject its nonresidential real property leases until January 8, 2001 (the “Extension Motion”). A hearing on the Extension Motion is set for October 12, 2000.¹

¹ On September 28, 2000, this Court entered a bridge order extending the Debtors’ time to assume or reject its nonresidential real property leases from October 9, 2000 to October 12, 2000 (the date of the hearing on the Extension Motion).

Argument

6. As the Court of Appeals for the Second Circuit has held, there are a myriad of factors that impact the question of whether the Debtors' time to assume or reject its leases should be extended beyond the 60-day period provided for in section 365(d)(4) of the Bankruptcy Code. *See South St. Seaport L.P. v. Burger Boys, Inc. (In re Burger Boys, Inc.)*, 94 F.3d 755, 761 (2d Cir. 1996). These factors include:

- (i) whether the debtor needs more time to analyze its leases in light of the plan it is formulating;
- (ii) whether the lessor continues to receive postpetition rental payments;
- (iii) whether the debtor's continued occupation will likely cause irreparable damage to the lessor; and
- (iv) whether the lease is among the primary assets of the debtor.

See, e.g., In re Burger Boys, Inc., 94 F.3d at 761; *Theatre Holding Corp. v. Mauro*, 681 F.2d 102, 104-06 (2d Cir. 1982); *In re 611 Sixth Ave. Corp.*, 191 B.R. 295, 298 (Bankr. S.D.N.Y. 1996); *In re Wedtech Corp.*, 72 B.R. 464, 471-72 (Bankr. S.D.N.Y. 1987). These same factors are considered when a Court considers a motion to compel the Debtors to assume or reject a lease. *See Wedtech*, 72 B.R. at 471.

7. A review of the factors listed above makes it clear that not only has AIF failed to show that cause exists to compel the Debtors to assume or reject the Lease, but in fact, consideration of these factors demonstrates that compelling the Debtor to assume or reject the Lease would constitute an extreme burden that clearly outweighs any alleged prejudice to AIF.

8. First, AIF's motion acknowledges that the question of whether the debtor has had sufficient time to formulate a plan of reorganization is critical, but then, tellingly, fails to discuss this factor. As this Court is aware, these chapter 11 cases are large and complex. As of the Filing Date, the Debtors operated 100 golf facilities and 17 ice skating and family entertainment centers across the country and were party to more than 90 leases. Although AIF's motion only requests GBGC assume or reject the lease pertaining to one property, such a

decision could have an enormous impact on the administration of the Debtors' estates and must be made in the context of the overall business plan ultimately adopted by the Debtors.

9. The Debtors and their advisors are in the midst of a systematic evaluation process designed to determine the most beneficial use for each property. The Debtors have already entered into an agreement for the sale of several properties to Klak Golf. Additionally, the Debtors entered into a stipulation with the landlord for the Debtors' Olney Maryland facility terminating the lease with respect to that property, and on September 9, 2000, this Court entered an order granting Debtors' motion to reject a lease for property located in Rocky Point, New York. The Debtors are thus making progress in evaluating which leases to maintain and which to reject; however, because of the nature and complexity of the Debtors' businesses, this analysis is not yet complete, and the Debtors need additional time to formulate a chapter 11 plan and to determine which leases will be necessary to the reorganized Debtors. *See Wedtech*, 72 B.R. at 472 (a large and exceptionally complex case supports the extension of time to assume or reject leases). This factor counsels strongly against AIF's request.

10. Second, there is the undisputed fact that GBGC has been making the postpetition rental payments. AIF's assertion that "[t]he Debtors are not paying for the use of the Leased Property" appears to be a reference to the question of who is obligated to pay tax obligations incurred prepetition. Any such dispute is narrow in scope, and we believe the law is in GBGC's favor.² Moreover, GBGC has continued to make current postpetition rental payments, however, and has also paid all postpetition taxes due and owing under the lease. And GBGC will continue to make such payments until it makes a determination with respect to the

² The Debtors have paid all taxes that have accrued postpetition. It may be that AIF is seeking payment of taxes for which AIF was billed postpetition but which relate to prepetition taxes. The Debtors have not paid such amounts as such obligations are clearly prepetition obligations. *See In re McCrory*, 210 B.R. 934, 940 (S.D.N.Y. 1997) ("[A] debtor-tenant's obligations under the lease to pay real estate taxes accrues on a daily basis and that, under § 365(d)(3), postpetition bills must be prorated so that the debtor only pays those charges accruing during the postpetition, prerejection period.").

assumption or rejection of the lease. Thus, this factor as well counsels against granting AIF's motion.

11. Third, AIF has failed to demonstrate that it will be prejudiced in any lasting manner if the Debtors are not immediately compelled to decide whether to assume or reject the Lease. The only prejudice alleged by AIF is that a competitor is "developing" another facility in the area and that AIF supposedly requires "certainty" in order to compete with that new facility. AIF fails, however, to explain how compelling the Debtors to assume or reject the Lease will alleviate any of the concerns AIF has regarding the competing facility. For example, AIF implies that there is a pressing need for significant capital improvements at the facility. If the relief sought were granted, however, and GBGC were to assume the Lease, GBGC would have no obligation to make the capital expenditures that AIF apparently feels are necessary. Rather, GBGC would have to cure any existing defaults (which would not result in any significant capital improvements) and would have to abide by its obligations under the Lease -- which is what it is already doing.

12. Although the prejudice to AIF is, at most, minimal, the potential harm to the Debtors' estates and their creditors could be enormous. If the Debtors prematurely reject the Lease, they may lose a valuable estate asset. If they prematurely assume the Lease, and later determine that the Lease is inconsistent with their reorganization plan, the Debtors may incur huge and unnecessary administrative expenses. In light of the size and complexity of the Debtors' cases, the Debtors' decision-making process must not be rushed solely because of AIF's speculative concerns about the effects of a competing facility.

13. The fourth and final factor is the question of the primacy of the lease among the Debtors' assets. While the Lease is of course not the Debtors' primary asset, leases of this type are absolutely critical to the Debtors, and until the process of reviewing all these leases is complete (and much headway has been made in this regard), the decision to accept or reject the Lease cannot be made responsibly.

Conclusion

When the Court granted the Debtors their first extension of time to assume or reject their leases the Court determined that good cause existed to do so because this was in the best interests of the Debtors, their estates and their creditors. AIF has not provided any evidence to change that determination. Indeed, AIF has conceded that the decision whether to compel the assumption or rejection of the Lease is committed to the sound discretion of this Court. The Court should exercise that discretion to deny the Motion.

For the reasons set forth above, the Debtors request that the Court deny the relief requested in the Motion.

Dated: New York, New York
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